IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22-3-2007

CORAM

THE HONOURABLE MR.JUSTICE K. VENKATARAMAN

C.M.A.No.517 of 2001
and
C.M.P.No.6682 of 2001

1. Thiru. Anjaya

2. The New India Assurance Company
Limited, 46, Moore Street,
Chennai 600 001. .. Appellants

vs.

1. Tmt.L.Lakshmi
2. Minor L.Nadhiya
3. Minor L.Devi
[R-2 & R-3 are rep. by their
mother the first respondent herein] .. Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 4.9.2000 made in W.C. Case No.230 of 1999 on the file of the Commissioner for Workmen's Compensation-I (Deputy Commissioner of Labour-I), Chennai.

For Appellants : Mr.S.Manohar

For Respondents : Mr.A.Shanmugaraj

JUDGMENT

The opposite parties in W.C. Case No.230 of 1999 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-I), Chennai are the appellants in this appeal. The claimants thereon are the respondents herein.

2. The respondents/claimants have preferred the claim application before the above referred Authority claiming compensation for the death of one Lakshmaiah, husband of the first respondent and father of the other respondents.

3. The short facts of the matter which need to be stated for the purpose of the present appeal is as follows:-

The deceased Lakshmaiah was working as a auto driver under the first appellant herein. He was paid a sum of Rs.100/- as daily wages for the above said work. Usually, he used to drive the auto belonging

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to the first appellant herein in day time between 7.00 A.M. and 7.00 P.M. and after that, the said auto of the first appellant was used to be driven by another auto driver from 7.00 P.M. to next day morning 7.00 A.M. On 8.3.1998, the first appellant has instructed the said Lakshmaiah to drive the auto bearing registration No.TN-01-K-6393 till the next day morning as the other duty driver has informed him that he is not attending the night shift work on that date. As per the instructions of the first appellant herein, the above said Lakshmaiah drove the auto continuously and consequently, he died on the next day morning (i.e.) 9.3.1998 due to heart attack during the course of employment at Vysarpadi. The respondents being the legal heirs of the deceased filed the claim application before the Authority referred to above. The first appellant being the owner of the vehicle has been added as the first opposite party and the second appellant being the insurer has been made as the second opposite party in the said claim application.

4. The said claim application has been resisted by the first appellant herein by filing a counter stating that he did not ask the said Lakshmaiah to drive the vehicle. But, the vehicle has been taken by one of his friend who has entrusted the same to the said Lakshmaiah. The other statements made in the claim application have been denied by the first appellant/first opposite party. The second appellant/second opposite party being the insurer has filed a counter stating that since the first opposite party himself is a driver, he did not employ anybody including the deceased to drive the vehicle. The other facts made in the claim application has been disputed by the second appellant herein. However, the Authority as referred to above has held that the accident took place in the course of employment and that the respondents/claimants are entitled to a compensation of Rs.1,35,560/-. Challenging the said award, the opposite parties in the said claim application have preferred the present appeal.

5. Mr.N.Manoharan, the learned counsel appearing for the appellants, contended that the death of Lakshmaiah was not out of and in the course of employment and hence, no compensation need be payable by the appellants. Further, it has been urged that there is no evidence that the work performed by the deceased workmen was the reason for his chest pain and subsequent heart attack. Further, it has been urged that the deceased was not at all employed by the first appellant to run the auto. Thus, the sum and substance of the argument of the learned counsel for the appellants is that the appellants are not entitled to pay any compensation.

6. Per contra, the learned counsel appearing for the respondents contended that Lakshmaiah died during the course of employment and that the work performed by the Lakshmaiah is the reason for his heart attack. Since the death occurred in the course of employment, the appellants herein are liable to pay the compensation. Thus, the learned counsel for the respondents submitted that the Authority has rightly held that the respondents are entitled to compensation and allowed the claim application filed by the respondents

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herein.

7. I heard Mr.S.Manohar, the learned counsel appearing for the appellants and Mr.A.Shanmugaraj, the learned counsel appearing for the respondents.

8. It is the specific case of the respondents in their claim application before the Authority referred to above that the first appellant/first opposite party paid a sum of Rs.100/- as daily wages to the deceased Lakshmaiah for working as auto driver. Further, the above said Lakshmaiah used to drive the auto belonged to the first appellant in the day time between 7.00 A.M. and 7.00 P.M.. On 8.3.1998, the first appellant has instructed the said Lakshmaiah to drive the auto till the next day morning as the other driver informed that he did not attend the night duty. As per the instructions of the first appellant, the said Lakshmaiah drove the auto continuously. Consequently, he died on the next day morning (i.e.) 9.3.1998 at 7.00 A.M. by heart attack during the course of employment. Thus, it is the specific case of the respondents in their claim application that in view of the continuous driving of the auto, he suffered heart attack during the course of employment. Though this specific plea in the claim application has been denied by the appellants herein, the copy of the F.I.R. which has been lodged by one S.Nagaraj clearly shows that on 9.3.1998, when he came out of his residence, he found that a person was lying in the auto itself and when he went near the said person, he found that he has already died. This will clearly show that the deceased died when he was driving the auto. Ex.P-2 post-mortem certificate shows that the deceased died due to heart attack. Admittedly, the vehicle belonged to the first appellant and on the fateful day, the deceased was driving the vehicle owned by the first appellant. Hence, presumption can be drawn that the first appellant has employed the deceased to drive his auto and while doing so, in the course of employment, the said Lakshmaiah died. Further, it is the specific case of the claimants/respondents that the said Laskhmaiah used to drive the auto belonging to the first appellant in the day time and on the fateful day, since the other driver did not report for duty, the said Lakshmaiah has driven the auto even during the night time also. It has been further averred that since the Lakshmaiah drove the auto continuously, he died on the next day by heart attack. It has to be seen that specific case has been put forth by the respondents herein by saying that in view of the overwork, the said said Lakshmaiah got chest pain and later died.

9. It is also not the case of the appellants that the deceased had previous history of heart attack. All the above aspects seem to have been weighed in the mind of the Authority to come to the conclusion that the respondents are entitled to compensation for the death of the said Lakshmaiah. Such reasoning, taking into consideration the plea that has been raised in this regard, cannot be said to be based on surmises and conjectures. It is not a case of absolute no evidence in support of such conclusion.

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10. Further, it has to be seen that the Authority came to the conclusion that the husband of the first respondent has suffered heart attack in the course of employment and is entitled for compensation. The said conclusion has been arrived at basing upon the materials on record and also basing on the plea that has been taken by the respondents. An appeal under Section 30 of the Workmen's Compensation Act will lie only if there is a substantial question of law. The questions of law that have been raised in this appeal are follows:-

> (1)Is the employer liable when the workman was not under his employment, but under a different person, namely a friend of employer and whether such workman is a workman, in terms of Section 2(1)(n)(c) of the Workmen's Compensation Act?
>
> (2) Is a death due to natural causes like heart attack, an accident within the meaning of 'arising out of and in the course of' a contract of employment, as per Section 3 of the Workmen's Compensation Act, 1923?
>
> (3) Is heart attack to workman or heart failure or coronary insufficiency are injuries and are accident within the meaning of Section 3 of the Act?

11. Admittedly, these questions of law are more on factual aspects than on questions of law. Since it has been found by the Authority that the first respondent's husband suffered heart attack during the course of employment and entitled for compensation, the said finding arrived at by the Authority need not be set aside in this appeal, if no substantial question of law arises. Even on facts, if I am able to come to some conclusion opposite to the one taken by the Authority under the Workmen's Compensation Act, still, the same cannot be set aside, unless and otherwise some substantial question of law is involved. Therefore, I am of the considered view that what is raised in the present appeal is the question of fact and not question of law.

12. In this connection, the learned counsel appearing for the respondents has cited the decision reported in 2007-1-L.W. 249 (MANAGEMENT OF PACHAMALAI ESTATE, VALPARAI v. SMT. MANI) wherein a Division Bench of this Court has held as follows:-

> "In the present case, however, the Commissioner for Workmen's Compensation and the learned single Judge have come to the conclusion that because of the strenuous nature of the work, the workman suffered heart attack. This essentially is a finding of fact based on some material on record and it cannot be said that such finding is based on surmises and conjectures or there is absolutely no evidence in support of such conclusion. An appeal under Section 30 of the Workmen Compensation Act can be considered only if there is a substantial question of law. Since, in the present case, the conclusion is based on some materials on record and the

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Commissioner for Workmen Compensation and the learned Single Judge have concurrently come to the factual conclusion that the death was on account of accident arising out of and in the course of employment, we are not inclined to take any different view of the matter."

13. The learned counsel further relied on an unreported decision rendered by this Court in C.M.A.No.1332 of 1996 dated 8.2.2002 wherein it has been held as follows:-

"On the evidence available on record and in the light of the principles laid down in the decisions referred to above, it has to be held that if the workman Selvam died of heart attack, there was a pre-existing heart condition which was aggravated by the strain of the work of the deceased which resulted in his death. In the instant case, the Commissioner for Workmen's Compensation has rightly held that the workman died of an injury arising out of and in the course of his employment. The order of the Commissioner for Workmen's Compensation is unassailable."

14. The learned counsel for the respondents relied on another decision reported in Vol.102 F.J.R. 90 (T.SHANMUGA MUDALIAR v. TMT. NOOJAHAN) wherein the Division Bench of this Court has held as follows:-

"There can be no dispute that the deceased died in the course of employment since there was no occasion for him to be at the Tiruvannamalai bus stand unless he had been driving the bus. It is futile to contend otherwise. The evidence of the conductor of the same bus, who had seen the deceased fall and die at the very spot where the bus had stopped cannot be ignored. The objections to the claim based on non-filing of the FIR or post-mortem report deserve no consideration. The claimants had pleaded overstrain as having contributed to the death. The accident, the unlooked for mishap, had happened at a spot, where the deceased would not have been but for the fact he was discharging his duty as a driver. It is capable of being attributed to the strain, ordinarily, inherent in the discharge of his duty. So the claim falls squarely within the Act."

15. These judgments will clearly show that it may not be possible at all times to produce direct evidence of the connection between the employment and the injury, but if the probabilities are more in favour of the employee, then the Commissioner of Labour is justified in inferring that the accident did in fact arise out of and in the course of the employment.

16. On the other hand, the learned counsel appearing for the appellant has cited the decision reported in 2007 I.L.R. 185 (SHAKUNTALA CHANDRAKANT SHRESHTI v. PRABHAKAR MARUTI GARVALI AND ANOTHER) wherein the Apex Court has held as follows:-

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"Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional fats are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the fact of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question."

17. In the same judgment, Their Lordships have held that there must be a causal connection between the injury, the accident and the work done in the course of employment and that if the evidence brought on record establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed. Thus, Their Lordships have held that for failure of heart because of stress and strain of work, compensation has to be awarded.

18. The learned counsel appearing for the appellants cited another decision reported in 2006 ACJ 2165 (JYOTHI ADEMMA v. PLANT ENGINEER, NELLORE THERMAL STATION) and contended that the respondents are not entitled to any compensation, But, I am unable to agree with the learned counsel appearing for the appellants. Even in the said decision, it has been clearly held in para 6 as follows:-

"Under Section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies a natural result of the disease which he was suffering or while suffering from a particular disease he died of that disease as a result of wear and tear, of the employment no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that death arose out of the employment and the employer would be liable."

19. Further, in the above case, it was on record that the deceased was suffering from chest pain and the deceased was previously taking treatment for such disease, but in the case on hand, no such plea has been taken by the appellants. Further, it has to be seen that in the said judgment, Their Lordships of the Supreme Court have directed that there shall be no recovery from the claimant of any amount paid. In the present case on hand, as discussed already, the deceased was driving the auto during morning hours and also during the night hours.

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The strain would have caused acute chest pain which has resulted in his death. The Authority has taken this fact into consideration while awarding compensation. I am unable to take a different view and hence, I am constrained to confirm the order passed by the Authority.

20. In the result, the order dated 4.9.2000 passed by the Commissioner for Workmen's Compensation-I (Deputy Commissioner of Labour-I), Chennai made in W.C. case No.230 of 1999 is liable to be confirmed and accordingly, confirmed. The Civil Miscellaneous Appeal stands dismissed. Consequently, C.M.P.No.6682 of 2001 is closed. No costs.

dpp

Sd/
Asst. Registrar

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Sub Asst.Registrar

To
1. The Commissioner for Workmen's Compensation-I (Deputy Commissioner of Labour-I), Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.
+ One ;cc to Mr. S. Manohar Advocate sR 17760
+ One cc to Mr.A.Shanmugaraj, Advocate sR 18173
PPV (co)
sg 14/5/07

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